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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

GABRIELA CHAVEZ, on behalf of herself
and other similarly-situated employees

Plaintiff,

v.

SCHEID VINEYARDS INC., a Delaware
Corporation; and DOES 1 Through 10,
inclusive,

Defendants.

Case No. 21CV002126

CLASS ACTION (COMPLEX)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT, ATTORNEYS' FEES
AND COSTS, AND CLASS
REPRESENTATIVE SERVICE PAYMENT**

Date: April 28, 2023

Time: 8:30 a.m.

Dept: 14

Judge: Hon. Carrie M. Panetta

Complaint filed: July 2, 2021

Trial date: Not set

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I. INTRODUCTION

Plaintiff Gabriela Chavez seeks final approval of a \$1,250,000 non-reversionary wage and hour class action and Private Attorneys General Act (PAGA) Settlement (Settlement) with Scheid Vineyards, Inc. (Defendant or Scheid). The Settlement will provide an estimated \$709,824.74¹ to a putative Class of 443 current and former non-exempt, hourly-paid employees of Defendant in California at any time from July 2, 2017 through December 31, 2022. Declaration of Isam C. Khoury (“Khoury Decl.”), ¶ 10.

Plaintiff has achieved an excellent result in this litigation. The average payout to each putative class member is substantial, at over \$1,500, and highest payment estimated at over \$3,900. With no reversion to Defendant, 100 percent of this money will be paid out, and no putative Class Member has, to date, opted out or objected. Declaration of Laura Singh on behalf of the administrator CPT Group (“CPT Decl.”), ¶¶ 6, 7. The proposed Settlement Agreement resulted from Class Counsel’s significant efforts and provides substantial benefits to the putative Class. Khoury Decl., ¶ 11.

Final approval should thus be granted as the Settlement is fair, reasonable, adequate and in the best interests of the putative Class. Khoury Decl., ¶ 12.

II. RELEVANT BACKGROUND

A. Procedural History.

On July 2, 2021, Plaintiff filed a Complaint in the Superior Court of California, County of Monterey, alleging class claims against Defendant on behalf of Plaintiff and the putative Class for violations of Labor Code sections 201-204, 218.5, 226, 226.2, 226.7, 510-512, 860, 1174, 1194, 1194.2, 1197, 1197.1, 1198, all applicable IWC Wage Orders, and California Business and Professions Code sections 17200, *et seq.* Khoury Decl., ¶ 13; Class Action and PAGA Settlement Agreement and Class Notice, attached as Exhibit 1 to the Declaration of Isam C. Khoury in Support of Preliminary Approval, filed with this Court on November 8, 2022 (“Agreement” or “SA”), SA, ¶ 2.2.

¹ Net Settlement Amount of \$678,574.74 plus Aggrieved Employee portion of PAGA Payment of \$31,250 equals \$709,824.74.

On September 7, 2021, Plaintiff filed the operative First Amended Complaint, which added a cause of action under the PAGA on behalf of all hourly, non-exempt employees employed by Defendant in the state of California from July 2, 2020 through the date of trial. Plaintiff also sought damages and prejudgment interest for the class and civil penalties for the PAGA group. Khoury Decl., ¶ 14; SA, ¶ 2.3.

On October 25, 2021, Plaintiff served requests for production, requests for admission, and interrogatories to Scheid, along with a notice of deposition of Scheid's persons most qualified. Khoury Decl., ¶ 15. In November 2021, the parties agreed to mediate and to informally exchange data and documents. Khoury Decl., ¶ 16.

B. The Settlement.

The Parties mediated with respected mediator Gig Kyriacou, Esq. on July 14, 2022. After a full day of arms'-length negotiations, Mr. Kyriacou tendered a mediator's proposal, accepted by the Parties on July 21, 2022. An MOU was fully executed on August 29, 2022 and the Agreement, presented for preliminary approval, was fully executed on October 10, 2022. Khoury Decl., ¶ 17.

The Settlement provides that Scheid will pay a non-reversionary, maximum Gross Settlement Amount ("GSA") of \$1,250,000 which includes: (a) attorneys' fees not to exceed \$416,666.67 (1/3 of GSA) to compensate Class Counsel for work performed and remaining to secure final Court approval; (b) actual litigation costs of \$12,758.59; (c) Class Representative Service Award of \$7,500 to Plaintiff Gabriela Chavez, for work as Class Representative, risks undertaken, and benefits conferred on the Class; (d) PAGA Payment of \$125,000 [\$93,750 to LWDA (75%)/\$31,250 to Aggrieved Employees (25%)]; and (e) Settlement Administration costs of \$9,500. Scheid will pay employer's payroll taxes in addition to the GSA. Khoury Decl., ¶ 18; SA, ¶ 4.1.

After approved deductions, the estimated \$678,574.74 Net Settlement Amount ("NSA") will be distributed to Participating Class Members. Individual Class Payments will be calculated based on the number of Class Period workweeks that each Participating Class Member worked. Khoury Decl., ¶ 19; SA, ¶ 4.3.1. Class Members will receive an estimated \$13.74 for each

workweek worked during the Class Period, with an average Individual Class Payment of \$1,526.71 and a highest estimated payment at \$3,928.74. Plaintiff Gabriela Chavez's estimated individual class settlement payment is \$1,634.68 before taxes. CPT Decl., ¶ 7. Settlement payments are characterized as 33.33% unpaid wages (W-2), 33.33% unpaid interest (Form 1099), and 33.33% as alleged statutory and civil penalties (Form 1099). Khoury Decl., ¶ 20; SA, ¶ 4.3.3.

The Settlement distribution is fair and reasonable, does not give preferential treatment to any Class Member, can be made from data readily available from Scheid, and the Administrator can apply the formula fairly and transparently. Khoury Decl., ¶ 21; CPT Decl., ¶ 7.

C. Preliminary Approval.

On December 21, 2022, the Court granted preliminary approval. The Order conditionally certified the Settlement Class, appointed Class Counsel and the Class Representative, approved CPT as Settlement Administrator, and preliminarily approved the Settlement Agreement. The Court set the Final Approval Hearing for April 28, 2023. Khoury Decl., ¶ 22.

D. Dissemination of Court-Approved Class Notice.

On January 18, 2023, CPT mailed the Notice Packet, in both English and Spanish, to 443 Class Members, informing them they had until March 20, 2023 to postmark and return a written objection or request exclusion. CPT Decl., ¶ 4, Exs. A & B (Class Notice). By the mailing date, CPT had established a dedicated toll-free telephone helpline to call CPT to inquire about the Settlement. CPT Decl., ¶ 2, Exs. A & B. To date, no Class Members have objected to or requested exclusion from the Settlement. CPT Decl., ¶ 6.

III. ARGUMENT

A. The Settlement is Fair, Adequate, and Reasonable.

The Preliminary Approval Motion thoroughly analyzed the terms of the proposed Settlement in light of *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (establishing factors supporting a presumption of fairness); and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (establishing factors determining whether a settlement is in the Class' best

1 interest, is adequate, and reasonable). The Court carefully reviewed and ruled on these analyses
2 and they are fully incorporated here by reference. See, *Preliminary Approval Motion*, at 6:16 –
3 14:16.

4 The Court determined the first three *Dunk* factors were met: (1) the settlement was
5 reached through arm’s-length bargaining; (2) investigation and discovery allowed counsel and
6 the court to act intelligently; and, (3) counsel was experienced in similar litigation. The fourth
7 factor could not be known until the Class had notice and an opportunity to respond. *Dunk*, 48
8 Cal.App.4th at pp.1801-1802.

9 The fourth *Dunk* factor has now been established. The Class, after receiving notice, and
10 having an opportunity to respond, overwhelmingly approved the Settlement. The Class response
11 to the Settlement was extremely favorable. No objections or requests for exclusion were
12 received. Khoury Decl., ¶ 23; CPT Decl., ¶ 6.

13 Nothing has changed since Preliminary Approval to negate the presumption of fairness
14 and Class Counsel remains convinced the Settlement is in the Class’ best interest. Khoury Decl.,
15 ¶ 24.

16 **B. The Proposed PAGA Payment is Reasonable.**

17 The settlement of PAGA penalties for \$125,000.00—ten percent of the GSA—of which
18 \$93,750.00 (75%) will be paid to the LWDA and \$31,250.00 (25%) to aggrieved employees, is
19 reasonable and appropriate. The Parties negotiated a good faith amount for PAGA penalties,
20 which was not the result of self-interest at the expense of Class Members. Khoury Decl., ¶ 25.
21 Where a “good faith amount” is negotiated and “there is no indication that this amount was the
22 result of self-interest at the expense of other Class Members,” it is generally considered
23 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL (N.D. Cal. Apr. 3, 2009) 2009
24 U.S. Dist. LEXIS 33900, at *25.

25 The amount allocated to PAGA is in fact higher than in other approved settlements. See
26 *Magadia v. Wal-Mart Assocs.* (N. D. Cal. May 31, 2019) 384 F. Supp. 3d 1058, 1101, citing,
27 among others, *Ceja-Corona v. CVS Pharm., Inc.* (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist.
28 LEXIS 5118 (\$10,000 PAGA penalties in settlement of \$900,000), recommendation adopted,

2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC* (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330 (\$10,000 PAGA penalties, \$1.25m settlement); *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057, *5-6 (\$10,000 PAGA penalties, \$2.5m settlement); *Garcia v. Gordon Trucking* (E.D. Cal. 2012) 2012 U.S. Dist. LEXIS 160052 (\$10,000 PAGA, \$3.7m settlement).

Class Counsel provided the LWDA with the Motion for Preliminary Approval and the Agreement. The LWDA did not object. Khoury Decl., ¶ 26, Ex. 1 – LWDA, November 8, 2022 Confirmation of Receipt. The LWDA was served with this Final Approval Motion when filed. Khoury Decl., ¶ 27, Ex. 2 – LWDA Confirmation.

C. Class Counsel’s Requested Attorneys’ Fees Are Reasonable.

Class Counsel requests attorneys’ fees of \$416,666.67, one-third of the GSA, and litigation costs of \$12,758.59. Counsel expended 202.1 hours, a \$137,789 lodestar. Khoury Decl., ¶ 28, Ex. 3 – Summary of Time; Ex. 4 – Costs; Declaration of Sahag Majarian II, (“Majarian Decl.”), ¶¶ 7-8.

1. The Results Achieved Support the Fee Request.

The most important factor to consider in granting a fee award is the success obtained. *In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475 (RCx) (C.D. Cal. June 10, 2005) 2005 U.S. Dist. LEXIS 13627, *27 (citing *Hensley v. Eckerhart* (1983) 461 U.S. 424). An excellent result was achieved, enforcing the law and providing benefits to the Class. The Class was provided notice of all settlement terms, including that Counsel would request an award of attorneys’ fees up to one-third of the GSA, \$416,666.67. Khoury Decl., ¶ 29; CPT Decl., ¶ 2, Exs. A & B. No Class Member objected to the attorneys’ fees award. *Id.* at ¶ 6.

2. A Fee Based on a Percentage of the Common Fund is Appropriate.

The California Supreme Court has recognized it is appropriate to award attorneys’ fees based on a percentage of the total value of benefits to Class Members from the settlement, also known as the “common fund” method. *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; see also *Vincent v. Hughes Air*

1 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.²

2 “[T]he lodestar method is not necessarily utilized in common fund cases.” *Lealao v.*
3 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27; *Dunk*, 48 Cal.App.4th at p. 1808
4 (attorneys’ fees may be calculated as percentage of common fund where settlement amount is
5 certain or easily calculable). A common fund fee award is especially appropriate here as it
6 spreads the attorneys’ fees among all beneficiaries of the fund; aligns incentives between
7 counsel and the class; better approximates market conditions in a contingency case; and
8 encourages class counsel to seek early settlement and avoid unnecessarily prolonging litigation,
9 which prevents unnecessary use of judicial and party resources, delay in correcting alleged
10 unlawful practices, and delay in compensating the class. *Laffitte*, 1 Cal.5th at p. 503.

11 With the guiding principle that early class action settlements are favored and may not
12 diminish an award of attorneys’ fees, Class Counsel submits the fee request should be awarded,
13 based on the risks and complexities of prosecuting the action, the contingent nature of any fee,
14 their experience in handling cases of this type, fees commonly awarded in these cases, and
15 vindication of the Class’ rights.

16 The purpose of the common fund approach is to “spread litigation costs proportionally
17 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.”
18 *Vincent*, 557 F.2d at p. 769. “[O]ne who expends attorneys’ fees in winning a suit which creates
19 a fund from which others derive benefits may require those passive beneficiaries to bear a fair
20 share of the litigation costs.” *Quinn v. State of California* (1995) 15 Cal.3d 162, 167. The
21 common fund doctrine has been applied “consistently in California when an action brought by
22 one party creates a fund in which other persons are entitled to share.” *City and County of San*
23 *Francisco v. Sweet* (1995) 12 Cal.4th 105, 110.

24 Class Counsel undertook representation at their own expense, with compensation wholly
25 contingent upon providing a Class benefit. Class Members will benefit from the proposed
26 Settlement and receive monetary payments. Based on the defined and clearly traceable Class

27 _____
28 ² California courts look to federal courts analyzing class issues. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 239-40.

benefit, the Court may award a percentage of the common fund as attorneys' fees. Khoury Decl., ¶ 30.

3. One-Third of the Common Fund is a Reasonable Fee.

"California courts routinely award attorneys' fees of one-third of the common fund." *Beaver v. Tarsadia Hotels* (S.D. Cal. Sept. 28, 2017) 2017 U.S. Dist. LEXIS 160214, *28. Several studies of class action fee awards found median common fund fee awards are about one-third of the total settlement fund and this has been accepted by California courts. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 ("fee awards in class actions average around one-third of the recovery."); Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel's Response, 17 Rev. Litig. 525, 546 (1998); T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996) (class action attorneys' fees are generally about "one-third of total settlement").

Counsel's request for one-third of the common fund is in the mid-range of awards which range from 20% to 50%, and is fair compensation for undertaking complex, risky, litigation on a contingent basis, and for the result achieved for the Class. Khoury Decl., ¶ 31.

Some courts have found an award of 33% of a common fund is the "benchmark" in California. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC) (S.D. Cal. Jan. 14, 2013) 2013 U.S. Dist. LEXIS 6049, *14 ("These percentages compare favorably with" the California (33%) benchmark.); *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMC) (S.D. Cal. Nov. 14, 2013) 2013 U.S. Dist. LEXIS 163118, at *7. Class Counsel's fee request is consistent with awards in similar California cases, and market rates, and is reasonable. Cohelan Khoury & Singer has routinely been awarded attorneys' fees of one-third of a common fund in wage and hour class actions, including: *Schaffer v. Rady Children's Hospital – San Diego, et al.*, San Diego County Superior Court, Case No. 2015-00022978 [Hon. Joel R. Wohlfeil – approving attorneys' fees of \$4,166,666, one-third of \$12,500,000 settlement in a certified wage and hour class action]; *McGrath v. Wyndham Resort Dev. Corp.*, [S.D. Cal. Jan. 30, 2018, No. 15cv1631

JM (KSC)] 2018 U.S.Dist.LEXIS 16095, *24 [Hon. Jeffrey T. Miller – approving attorneys’ fees of \$2,416,666.67, one-third of \$7,250,000 settlement in a precertification wage and hour class action]; *Rodriguez v. Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313 [Hon. Kenneth Freeman – approving attorneys’ fees of \$2,000,000, one-third of \$6,000,000 settlement in a pre-certification wage and hour class action]; *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case No CIV530955 [Hon. Marie S. Weiner – approving attorneys’ fees of \$1,666,666.67, one-third of \$5,000,000 in a certified wage and hour class action]; *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court, Case No. BC522676 [Hon. Elihu M. Berle – attorneys’ fees of \$1,300,000, one-third of \$3,900,000 in certified wage and hour class action]; and *Popal v. Wells Fargo Bank, National Associate*, San Diego County Superior Court, Case No. 37-2020-00038101 [Hon. Gregory W. Pollack – approving attorneys’ fees of \$1,000,000, one-third of \$3,000,000 settlement in pre-certification wage and hour class and representative action]. Khoury Decl., ¶ 32.

4. A Lodestar Cross-Check is Not Required.

Many Courts decline to consider a lodestar cross-check. *See, e.g. Glass v. UBS Financial Services, Inc.*, No. 06-4066-MMC (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist. LEXIS 8476 (“no need to conduct a lodestar cross-check [as] [c]lass counsel’s prompt action in negotiating a settlement while the state of the law remained uncertain should be fully rewarded”); *Lopez v. Youngblood*, No. 07-0474-DLB (E.D. Cal. Sep. 1, 2011) 2011 U.S. Dist. LEXIS 99289 (“lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference.”)

Even when used, a cross-check “calculation need entail neither mathematical precision nor bean-counting,” is not a “full-blown lodestar inquiry,” and “can be performed with a less exhaustive cataloguing and review of counsel’s hours.” *Barbosa v. Cargill Meat Solutions Corp.* (E.D. Cal. July 2, 2013) 297 F.R.D. 431, 451.

Under the lodestar method, a base fee is calculated from compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorneys. *Serrano v. Priest*, 20

Cal.3d at p. 48. The court then enhances the lodestar by a “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.*, at p. 49; *see also Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36.

5. Counsel’s Hourly Rates Are Reasonable.

Class Counsel are entitled to hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Ketchum*, 24 Cal.4th at p. 1133; *Children’s Hospital and Med. Center v. Bonta* (2002) 97 Cal. App. 4th 740, 783 (affirming rates as “within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work”). When determining reasonable rates, Courts may consider attorney skill and experience, nature of the work performed, and the relevant area of expertise and the attorney’s customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.

Class Counsel’s skill and experience support their hourly rates and are in line with rates typically approved in California wage and hour class actions. Khoury Decl., ¶¶ 2-9, 33; Majarian Decl., ¶¶ 2-4. Cohelan Khoury & Singer’s practice is limited to litigating class and representative actions on behalf of employees and consumers, and our firm has been appointed Class Counsel or co-Class Counsel in over 300 such cases. Khoury Decl., ¶¶ 2-9, 34. Mr. Majarian has devoted a significant portion of his practice to employment law and class actions, and has been appointed co-class counsel for plaintiff in no less than 300 wage and hour class actions. Majarian Decl., ¶¶ 2-4.

Class Counsel’s skill and experience support their hourly rates: Cohelan Khoury & Singer: Founding Partners, Timothy D. Cohelan - \$950, Isam C. Khoury - \$925; Managing Partner, Michael D. Singer - \$900; Associates J. Jason Hill (former) - \$700, Rosemary C. Khoury - \$500; Law Offices of Sahag Majarian II: Principal, Sahag Majarian II - \$850. These rates are in line with those typically approved in California wage-and hour class action litigation. Indeed, the Laffey Matrix would actually provide for a rate increase. Khoury Decl., ¶ 35, Ex. 5 - Laffey Matrix; Majarian Decl., ¶ 4.

///

6. Class Counsels' Total Hours Are Reasonable.

Hours are reasonable if, "at the time rendered, [they] would have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest." *Moore v. Jas. H. Matthews & Co.* (9th Cir. 1982) 682 F.2d 830, 839. *Norman v. Housing Auth.* (11th Cir. 1988) 836 F.2d 1292, 1306 ("The measure of reasonable hours is determined by the profession's judgment of the time that may be conscionably billed and not the least time in which it might theoretically have been done").

7. The Lodestar Multiplier is Reasonable.

When a lodestar is used it may be enhanced by a multiplier. *Serrano*, 20 Cal.3d at p. 48. Factors determining level of enhancement include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. *Lealao*, 82 Cal.App.4th at p. 49. The list is not exhaustive and a Court may consider other factors it deems important in setting the multiplier. *Id.* at 40; *Ketchum*, 24 Cal.4th at p. 1139.

In *Lealao*, the Court held a trial court's refusal to enhance the lodestar was an abuse of discretion, remanded for consideration of the original 8.0 multiplier request, and opined a multiplier more than 3.5 was reasonable. *Lealao*, 82 Cal. App. 4th at pp. 24, 52. See *SternwestCorp. v. Ash* (1986) 183 Cal.App.3d 74, 76 (case remanded with directions "to enhance the lodestar award...").

To the extent a lodestar was used to check the fee, a multiplier of approximately 3.0 (\$416,666.67/\$137,789) is supported by the novelty and difficulty of the questions involved, the skill displayed by Class Counsel in addressing them, the judgment and skill used to resolve them while the law remains uncertain, and the contingent nature of any recovery. Khoury Decl., ¶¶ 36, 37.

D. Class Counsel and Settlement Administration Costs Are Reasonable.

The Settlement allows Class Counsel to recover up to \$15,000 in costs and the Settlement Administrator to recovery up to \$10,000 in costs. Counsel and the Settlement

1 Administrator respectively seek \$12,758.59 and \$9,500 in reasonable and necessary costs.
2 Khoury Decl., ¶ 38, Ex. 4 – Costs; Majarian Decl., ¶ 8; CPT Decl., ¶ 9.

3 **E. The Requested Class Representative Service Payment is Reasonable.**

4 Service awards “are fairly typical in class action[s],” “to compensate class
5 representatives for work done on behalf of the class, to make up for financial or reputational
6 risk undertaken in bringing the action.” *Cellphone Termination Fee Cases* (2010) 186
7 Cal.App.4th 1380, 1394.

8 Modern society seems increasingly to expose men to . . . group injuries for
9 which individually they are in a poor position to seek legal redress, either
10 because they do not know enough or because such redress is disproportionately
11 expensive. If each is left to assert his rights alone if and when he can, there will
12 at best be a random and fragmentary enforcement, if there is any at all. This
13 result is not only unfortunate in the particular case, but it will operate seriously
14 to impair the deterrent effect of the sanctions which underlie much
15 contemporary law. The problem of fashioning an effective and inclusive group
16 remedy is thus a major one. *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800,
17 807.

18 Enforcement of laws protecting California employees would be “random and
19 fragmentary,” or non-existent, if no one was willing to come forward and spend time to work on
20 behalf of others, and perhaps most importantly, take risks those others do not bear.

21 Class action plaintiffs, not class members, risk a judgment for defendant’s costs. “Those
22 who choose to take the risks of litigation should be the ones who bear the cost when they are
23 unsuccessful.” *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433. The *Earley* court
24 contended this risk was balanced by potential reward.

25 “While imposition of the entire cost burden on the named plaintiffs may have a chilling
26 effect on the willingness of plaintiffs to bring class action suits, this effect easily may be
27 outweighed by the potential recovery.” *Earley*, 79 Cal.App.4th at p. 1433. Plaintiff’s recovery
28 in a class action will always be less than an individual action, take longer to obtain, and have no
potential for early settlement.

So, if “[t]hose who choose to take the risks of litigation should be the ones who bear the
cost when they are unsuccessful,” how can that risk be offset? *Earley*, 79 Cal.App.4th at p.
1433. An adequate Service Award.

Ms. Chavez more than satisfied her obligation to be available when asked and work with counsel to protect the interests of the Class and place them above her own. Accepting the risk of judgment for Defendant's costs, the potential loss of employment opportunities, or achieving compensation for the Class, are each sufficient to support a Service Award of \$7,500. Declaration of Gabriel Chavez, ¶¶ 3-15. Together, they are more than sufficient.

It is impossible to know, or intervene, each time a class action plaintiff loses an employment opportunity, making it essential to compensate them at final approval, the only time the risk they took can be at least slightly offset and they can be adequately compensated.

The Class received notice Plaintiff requested \$7,500 "for filing the Lawsuit, working with Class Counsel and representing the Class" and were informed "A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and Individual PAGA Payment." CPT Decl., ¶ 2, Exs. A & B. No Class Member objected. *Id.* at ¶ 6.

IV. CONCLUSION

The Settlement favorably resolves what would otherwise be uncertain litigation. Plaintiff respectfully requests this Court enter an order granting Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, and Class Representative Service Payment.

Respectfully submitted,

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: April 4, 2023

By: 

Michael D. Singer

Isam C. Khoury

Rosemary C. Khoury

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